



C.R.P.(MD).No.2832 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD)No.2832 of 2018

and

C.M.P(MD) No.12303 of 2018

M.Latha

... Petitioner/Petitioner/Plaintiff

-VS-

1. D.Kannan

2. R.Sathyapriya

3. D.Prakash

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C, to set aside the fair and decreetal order passed by the learned III Additional Subordinate Judge, Madurai, in I.A.No.330 of 2017 in O.S.No.575 of 2004, dated 13.10.2017.

For Petitioner : Mr.S.Srikanth

for APN Law Associates

For Respondents : Mr.S.Ayyanar Premkumar



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ORDER

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The present Civil Revision Petition has been filed by the petitioner under Section 115 of C.P.C, to set aside the fair and decreetal order passed by the learned III Additional Subordinate Judge, Madurai, in I.A.No.330 of 2017 in O.S.No.575 of 2004, dated 13.10.2017.

2. The petitioner is the plaintiff before the trial Court.

3. The short facts which give rise to the instant Civil Revision Petition are that, the petitioner/plaintiff has filed a suit for partition and for other reliefs against his father, brother and sister.

4. It appears that the suit was dismissed for default on 09.07.2009. However, the petitioner had filed an application for restoration of the suit with a delay of 2805 days. The reason assigned by the petitioner is that for livelihood, she went to Andhra and only when she returned during the 2017 and went to the Advocate office, she came to know about the dismissal of the suit.



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5. It appears from the records that the respondents did not file any counter, however, the learned trial Judge is of the view that, taking into consideration of the long delay of 2805 days, some valid right would have been accrued upon the defendants. Therefore, by referring to the judgment in **2013 (5) CTC 547 (Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Acadamy and others)** the trial Judge has dismissed the application. Aggrieved with the order of the learned trial Judge, the petitioner has come with the instant Civil Revision Petition.

6. The learned counsel for the petitioner would submit that, since this is only a partition suit, notwithstanding that the dismissal of the partition suit, the respondents who are the siblings have not filed any counter statement in the restoration application. Hence, he would submit that the very dismissal order passed by the learned trial Judge is liable to be interfered with.

7. Whereas, the learned counsel for the respondents in all fairness would submit that this is only a suit for partition and would further concede that they did not appear before the trial Court.



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8. This Court has given anxious consideration to the submissions of the learned counsel on either side.

9. Considering the fact that the respondents herein have not filed neither any objection nor any counter before the trial Court, this Court is of the view that though there is a delay of 2805 days, still in a suit for partition unless the issue is decided, the rights of the parties will be kept in abeyance. Therefore, this Court would like to interfere with the order passed by the learned trial Judge so as to do substantial justice to both the parties. However, considering the long delay and also to compensate the hardship suffered by the respondents/defendants, this Court is inclined to award a sum of Rs.5,000/- (Rupees Five Thousand only) as costs.

10. In the result, this Civil Revision Petition is **allowed** on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondents/defendants within a period of four weeks from the date of receipt of the copy of this order. Failing which, the Revision Petition stands dismissed without any further reference to this Court.



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11. Considering the fact that the suit is of the year 2004, the learned trial Judge is directed to dispose of O.S.No.575 of 2004 as expeditiously as possible preferably within a period of six months from the date of receipt of the copy of this order and both the parties are directed to co-operate with the trial. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

26.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The III Additional Subordinate Judge,
Madurai,



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C.KUMARAPPAN,J.

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